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Young Offenders

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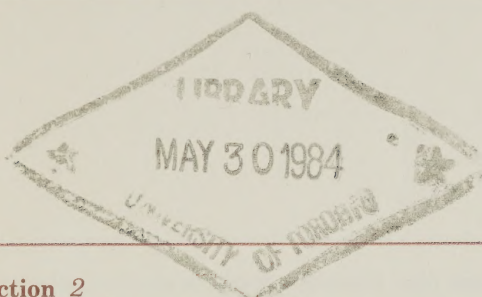
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Introduction

This pamphlet attempts to explain what happens when a young person comes into conflict with the law.

The justice system for young offenders in Ontario operates on two basic principles:

What is best for the young person?

What is best for society?

Every effort is made to give the young person a second chance and the guidance necessary to develop a rewarding and satisfying life.

Young Offenders Act

In Canada, the new federal legislation that now governs how young people charged with criminal and other federal offences are to be dealt with is called the Young Offenders Act (YOA). This Act, which replaces the 75-year-old Juvenile Delinquents Act, became law on April 2, 1984. The YOA applies to young people between the ages of 12 to 15 inclusive (the Act requires that the maximum age go up to 17 inclusive in every province in Canada on April 1, 1985).

The new Act is based on the philosophy that young people have the same rights to due process of law as adults, and like adults, should be held responsible for their actions. On the other hand, the Act also recognizes that young people are not yet fully mature and therefore should not always be held accountable in the same manner or suffer the same consequences as adults.

In keeping with that philosophy, the Young Offenders Act establishes a system of youth courts, procedures and sentences which is separate from that established for adults, but which provides for the same basic rights guaranteed adults.

At the same time the province has developed new laws and procedures for dealing with specific offences and age groups not covered by the YOA.

Provincial Offences

For example, young people who are charged with the more minor and regulatory provincial offences such as drinking liquor while under the age of 19, trespassing, hitchhiking, and driving without a licence, are now to be dealt under the same legislation as adults — the Provincial Offences Act (POA).

The POA has been modified, however, to take into account the special needs and circumstances of young people between the ages of 12 to 15 inclusive.

A young person charged with a provincial offence will appear before a family court judge who has been designated to try provincial offences by young people.

Truancy

The province is also in the process of developing new procedures for dealing with young people who are habitually absent from school — the old provincial offence of “truancy”.

Amendments to the provincial Education Act are being considered that will remove "truancy" as an offence under that Act.

Under the proposed amendments, a school counsellor who is aware of a child being frequently absent without cause will be able to apply to the family court for a hearing which the child and his or her parents may be ordered to attend. At this hearing the court will have several options available: it may order the child to attend school; recommend the child undergo counselling or treatment; require the school board to provide an alternative program for the child; or, in extreme cases, report to the children's aid society (CAS) that the child is "a child in need of protection".

The Education Act specifies that it is the duty of parents to ensure that their children attend school. Under the proposed amendments parents who don't do so may be liable to a fine of up to a maximum of \$1000 and required to post a \$1000 bond that will be revoked if their child doesn't attend school.

Children under 12

Children under the age of 12 are considered too young to be criminally responsible for any offences they might commit. As such, they cannot be convicted and therefore are not covered by either the Young Offenders Act or the Provincial Offences Act. Authorities can, however, intervene under the terms of the Child Welfare Act and the proposed Child and Family Services Act to ensure that the child receives help.

What is the role of the police?

When dealing with a young person suspected of committing a criminal offence, the police have basically two options. At the police officer's own discretion, the young person may simply receive a warning. Or the officer may charge the young offender with an offence under the Young Offenders Act.

If a charge is laid, the police officer is required to tell the young person his or her rights at the time of arrest including the right to legal representation. The YOA also requires that the young person's parents be notified of the charge and all proceedings.

In the case of serious offences such as breaking and entering and theft, the police may take fingerprints and photographs of the young offender. Those photographs and fingerprint records will be destroyed if the young person is acquitted or the charge is dismissed.

The young person will, in most cases, be issued a summons to appear in court or an appearance notice. Until the court appearance he or she may be released, detained in custody, or released in the care of an adult. (See section on Detention and Bail)

If the young person has committed a provincial offence, the police officer may issue a summons on the spot requiring the youth to appear in court or the police officer may go before a justice of the peace and lay a charge. Unlike adults, young people do not have the option of paying a fine out of

court. Again, the police are required to give notice to the parents that a charge has been laid against the young person.

In situations where the young person suspected of an offence is under the age of 12, the police officer may take one of two courses of action, at his or her own discretion. The officer may give the child a warning and return the child to his or her parents. Or, if the situation warrants it, the officer may refer or take the child to the children's aid society as a child who may be in need of protection. If the family court does find the child to be in need of protection, the child might be allowed to remain at home under CAS supervision or taken into CAS care and placed in a foster home, children's mental health centre or group home—whichever the court deems best for the child.

What happens in court?

The court that a young person will be ordered to appear before is the provincial court (family division). This court can operate as a youth court under the Young Offenders Act and hear criminal cases; or as a provincial offences court under the Provincial Offences Act and hear the cases of young people charged with provincial offences

The Young Offenders Act sets out strict procedures that the court must follow in dealing with young people charged with criminal offences. The purpose of these strict procedures is to ensure the young person's rights are safeguarded and special needs are recognized by the court.

For example:

- a young person is guaranteed access to a lawyer;
- the youth court judge is required to tell the young person his or her rights in court;
- the judge must ask for a pre-sentencing report before making a disposition involving custody. This report, generally prepared by a probation officer, is an assessment of the young person's circumstances including age, behaviour, previous convictions, school records and so on. It also includes an appraisal of the programs and facilities available to meet the young person's needs. A report may also be ordered for other dispositions.
- if the judge considers that the young person is suffering from a physical, psychological or learning disorder or mental retardation, then a medical, psychiatric or psychological report can be ordered;

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- the young person's parents must be notified of all proceedings and encouraged, or, in some cases, ordered to attend.

When the provincial court (family division) operates as a provincial offences court to hear the cases of young people charged with provincial offences it follows essentially the same procedures as the adult provincial offences court — with some modifications.

One major difference is that the young person must be present at the trial — unlike adult court where the court may proceed even if the defendant does not appear.

What about detention and bail?

Under the Young Offenders Act, young people charged with criminal offences have the same right to bail as adult offenders. That means a young offender may be released either with or without bail, or with or without specific conditions. Bail applications for young people are dealt with by the youth court, using the same rules and criteria that are set out in the Criminal Code.

In some circumstances, for example, if the judge has serious doubts the young person will appear for trial, the youth court can rule that the young person be placed in an observation and detention home. This is essentially a temporary home where the young person can live safely and securely until his or her case has been tried. Observation and detention homes range from secure or locked settings to group homes and, in some cases, private homes. The court tries to place the child in a setting which is best for him or her.

A young person charged with a provincial offence is seldom detained in custody before the trial. Virtually the only reason a young person might be detained is as a last resort to ensure the young person attends trial.

What happens if the young person is found guilty?

If the young person is found guilty of committing a criminal or other federal offence there is a wide range of dispositions (as sentences are called in youth court) available to the youth court judge under the Young Offenders Act. Like adult sentences, dispositions set out in the YOA are for a specific length of time. The various options available allow the youth court judge to take into account the special circumstances and needs of the young person involved, the rights and needs of the victims, and the need to protect society.

Dispositions available:

- absolute discharge;
- fine of up to \$1000;
- payment to the victim of the offence;
- compensation by way of personal service to the victim;
- community service order;
- treatment in a hospital or children's mental health facility;
- probation for up to two years;
- committal to custody for up to two years (three years if the young offender is being sentenced for an offence for which an adult offender would be liable to life imprisonment);

- any combination of these dispositions so long as the combination does not exceed two years for one offence or three years for two or more offences.

In the case of provincial offences, the provincial offences court judge may order an absolute discharge, order the young person to pay a fine, or put the young person on probation.

Young people, like adults, have the right to appeal a court decision—whether that is a youth court decision, or a provincial offences court decision. The young person can appeal either a finding of guilt or the disposition that the judge orders.

What does probation involve?

A common disposition, particularly if the young person is a first offender, is to place him or her on probation. Generally this means that the young person is allowed to remain at home but must report regularly to a probation officer assigned to the case.

The role of the probation officer is not only to supervise the young person but to provide support and guidance, as well.

Placing young people on probation gives them an opportunity to learn more responsible behaviour within their own communities.

Under the terms of the Young Offenders Act, the period of probation is specified by the court at the time of the disposition. Maximum length of time a young person can be on probation is two years.

What does committal to custody involve?

A committal to custody means that the young person is placed in a specially designated residential facility for a specific period of time, up to a maximum of two years (or possibly three under special circumstances).

When the youth court commits a young person to custody, the judge must specify whether the young offender is to be placed in “open” or “secure” custody. “Open” custody refers to facilities such as group homes and minimum security child care institutions. “Secure” custody generally means a locked institutional setting.

The Young Offenders Act outlines very specific conditions for committals to secure custody. It is the intent of the YOA that young people should only be sent to secure custody facilities as a last resort, for their own protection or for the protection of society.

Are dispositions ever reviewed?

All dispositions may be reviewed—and possibly changed—under the terms of the Young Offenders Act.

The main purpose of the reviews is to ensure dispositions remain relevant and geared to the circumstances and progress of the young offenders. The YOA identifies who may apply for a review of a disposition and on what grounds.

The disposition of a young person who has been committed to custody for more than a year must be reviewed at least every year by the youth court. The youth court judge will take into account the young person's progress, any new facilities and programs that were not available when the original disposition was made and any other relevant facts.

As a result of the review, the judge may decide to confirm the original disposition, move the young offender from secure to open custody or change the custody order to a probation order.

This means that, under the YOA, a judge may order a youth released from custody and placed on probation for the last portion of a custody disposition in order to help ease that young person's transition back into the community.

All non-custodial dispositions may also be reviewed by the youth court judge at the request of the provincial director, the young offender, his or her parents or the Crown prosecutor. The judge may decide to confirm the original disposition or change the terms of the disposition.

If the young person fails or refuses to comply with a disposition, or escapes or tries to escape from custody, the youth court judge has the option of ordering a new disposition, including one that is more severe than the original.

What happens when the disposition is completed?

Once the young offender has completed his or her disposition, the Young Offenders Act states that the young person shall be deemed “not to have been found guilty of the offence”. What this means is that the conviction cannot disqualify the young person from obtaining employment in a federal department, the Canadian forces or any business within federal jurisdiction.

The young offender’s court and probably other records will continue to exist, however, until that young person has completed a specified crime-free period—two or five years depending on the seriousness of the offence.

At the end of that time, providing the youth has not committed another offence, the records are destroyed and the conviction is, in effect, completely erased.

Behind this provision of the YOA is one of the basic principles of our justice system for young offenders—the principle that young people should not have to pay well on into their adulthood for an isolated brush with the law. Whenever possible, young people should be given an opportunity to make a fresh start.



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